

W/O

4:18 FILED 9 O'Clock 9 M.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

SEP 23 2011

SANDEE K. MARYKAM, Clerk
By: B. Chambers

DIVISION PRO TEM B

HON. WARREN R. DARROW

By: Robin Gearhart
Judicial Assistant

CASE NUMBER: V1300CR201080049

Date: September 23, 2011

TITLE:

COUNSEL:

STATE OF ARIZONA

Sheila Sullivan Polk
Yavapai County Attorney
Bill Hughes, Esq.
Deputy Yavapai County Attorneys

(Plaintiff)

(For Plaintiff)

vs.

JAMES ARTHUR RAY

Thomas K. Kelly, Esq. (e)
425 E. Gurley
Prescott, AZ 86301

Luis Li, Esq.
Brad Brian, Esq.
Truc Do, Attorney at Law (e)
Miriam Seifter, Attorney at Law
MUNGER TOLLES & OLSON LLP
355 S. Grand Avenue, 35th Fl.
Los Angeles, CA 90071

(Defendant)

(For Defendant)

ORDER GRANTING MOTION TO CONTINUE AND SETTING SCHEDULING CONFERENCE

The Court has considered the motion to continue, the response, and the reply. The parties have now provided to the Court legal authority for their positions.

To reiterate, considered strictly as a procedural question, the time for sentencing has not been unduly delayed in this matter given the nature and length of the case. It is not unusual to postpone sentencing proceedings for reasons such as procuring medical or psychological evaluations, conducting presentence hearings, or determining appropriate restitution amounts. In fact, the Court notes that the presentence report, which was dated September 15 but was not received by the Court and parties until this week, indicates that the victims are seeking more than \$76,000 in restitution; it is unknown whether this amount is or will be agreed upon or whether a restitution hearing will be necessary.

As noted previously, the Court must attempt to weigh the important competing interests being advanced in this matter. It would be presumptuous for anyone, including this judge of course, to purport to understand fully the thoughts and feelings of the families of the victims in this case. The Court does recognize and understand, however, the important victims' rights interests that are being asserted.

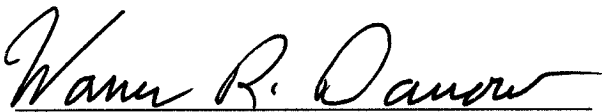
The Court has determined, most recently in the context of the motion for new trial, that the Defendant did receive a fair trial despite the State's acknowledgment of error and despite what this Court found to be a violation of Mr. Ray's constitutional rights under *Brady*. The issue now under consideration again implicates important constitutional rights. This Court does not question that the Defendant would have competent legal counsel available to conduct the presentence hearing and sentencing should Mr. Kelly's medical condition prevent him from doing so beginning next week. As the Defendant notes, however, this fact does not address the Defendant's constitutional right to have counsel of his choice. In addition, the defense attorneys have avowed to this Court that even if Mr. Kelly were to become physically capable of conducting the hearing next week, problems with regard to preparation for the hearing and with regard to witness availability would remain.

After considering the relevant circumstances and the constitutional rights of the Defendant as well as the victims, the Court determines that a continuance for a reasonable amount of time would serve the interests of justice. Therefore,

IT IS ORDERED granting the motion to continue and **setting a telephonic scheduling conference for Monday, September 26, 2011, at 3:00 p.m.**, in Division Pro Tem B by calling (928) 771-3303. Time for sentencing is waived.

IT IS FURTHER ORDERED vacating the presentence hearing and sentencing dates previously set in the Court's Order dated September 20, 2011: Wednesday, September 28, 2011, Thursday, September 29, 2011, Friday, September 30, 2011, Tuesday, October 4, 2011, Wednesday, October 5, 2011 and Thursday, October 6, 2011.

Dated: This 23rd day of September, 2011.


HON. WARREN R. DARROW
Judge of the Superior Court

cc: Victim Services Division